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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,540	04/12/2000	William Allocca	23984-13942	5837
758 FENWICK & WEST LLP 7590 SILICON VALLEY CENTER 09/15/2009 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041				
EXAMINER				
GARG, YOGESH C				
ART UNIT		PAPER NUMBER		
3625				
MAIL DATE		DELIVERY MODE		
09/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/547,540	Applicant(s) ALLOCCA ET AL.
Examiner Yogesh C. Garg	Art Unit 3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 13-21, 23-27, 29-33, 35-38, 40, 41, 50-65, 67, 68 and 129.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Yogesh C Garg/
Primary Examiner, Art Unit 3625

Continuation of 3. NOTE: The current amendments, that is replacing "providing" and "order fulfillment" terms by --enabling--and --procurement--terms respectively, and adding terms --ordering--, --subsequent to the first indication--, and --with the multiple procurement options--in claims 1, 2, 4, 5, 7, 9, 10, 17, 32, 67, and 68, would require further consideration._.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 7/27/09 have been fully considered but they are not persuasive for following reasons:

(i) The applicant objects to the rejection of claims 1-7, 9, 10, 13, 15-21, 23-27, 29-33, 35, 37, 38, 40, 41, 50-65, 67, 68 and 129 as an improper omnibus rejection. The applicant disagrees with the applicant because this objection is untimely in view of the earlier several rejections and responses from the applicant when this objection was not raised. Since 1/10/2003 when for the first time this rejection was presented there have been at least XX rejections/ Board of Appeal decision and YY applicant's responses, as details given below and never this objection was raised or brought to the examiner's notice:

A. Time line of Office actions and Applicant's responses:

1/10/2003 : Non-final office action including the above cited rejection.

4/10/2003: Applicant's response without objecting to the above cited rejection as being an omnibus rejection.

7/8/2003 : Final office action including the above cited rejection.

12/8/2003 Applicant submits Appeal Brief without objecting to the above cited rejection as being an omnibus rejection.

3/2/2004 Final office action including the above cited rejection.

6/2/2004 Applicant submits Appeal Brief without objecting to the above cited rejection as being an omnibus rejection.

5/2/2006 Examiner's Answer mailed

7/3/2006 Applicant submits Reply Brief without objecting to the above cited rejection as being an omnibus rejection.

9/4/2006 Examiner's Answer mailed.

14/4/2006 Applicant submits Reply Brief without objecting to the above

8/27/2007 Applicant submits Reply Brief without objecting to the above cited rejection as being an omnibus rejection. .

9/7/2007 Applicant submits Reply Brief without objecting to the above cited rejection as being an omnibus rejection.

11/13/2007 Examiner's Answer mailed.

1/8/2008 Applicant submits Reply Brief without objecting to the above cited rejection as being an omnibus rejection.

1/26/2009 Board decision affirming all the rejections mailed.

3/5/2009 Amendment/Remarks/RCEX filed without objecting to the above cited rejection as being an omnibus rejection.

In view of the above several office actions including a Board decision affirming all the rejections and the applicant never taking an objection to the rejection of claims 1-7, 9, 10, 13, 15-21, 23-27, 29-33, 35, 37, 38, 40, 41, 50-65, 67, 68 and 129 which now applicant objects to being an omnibus rejection is untimely and not compelling specially when without pointing out any errors as why the combined art of Hartman and Yamada does not teach the limitations of these claims .

(ii) The examiner also respectfully disagrees with the applicant's following arguments:

A: The cited references do not disclose or suggest a display element for enabling order fulfillment instructions for ordering the identified item (pages 18-20).

The examiner disagrees because Hartman does disclose information that identifies the item and displays an indication of an action (e.g., a single action such as clicking a mouse button) that a purchaser is to perform to order the identified item. In response to the indicated action being performed, the client system sends to a server system the provided identifier and a request to order the identified item. The server system uses this identifier to identify additional information needed to generate an order for the item and then generates the order (see Hartman 2: 51-62 and also Board's decision mailed 1/26/2009, page 6, lines 11-20 confirming the same.).

B. The cited references do not disclose or suggest display of a plurality of order fulfillment options, each comprising delivery address, shipping instructions, and payment source element for enabling order fulfillment instructions for ordering the identified item (pages 20-21).

The examiner disagrees. Hartman does disclose displaying and requiring procurement options to complete an order, and those options may include payment information and delivery information (FF 01-04 and also Board's decision mailed 1/26/2009, pages 12-14). Hartman further describes predefining such options (FF 03) and mapping users to sets of partial purchaser-specific order information with client identifiers (FF 05). Thus, each such client identifier maps to a procurement option having associated information of multiple types including at least payment information and delivery information. Although Hartman characterizes the codes that identify each set of partial purchaser-specific order information as client identifiers, these identifiers may be selected by the current system user (FF 05) and thus operate as a collection of partial purchaser-specific order information identifiers for a given user. Yamada provides data entry 24 implementation details useful to Hartman's sales system, including suggested data 25 entry screens for purchase information such as Hartman's destination information 26 (FF 07). As to the resulting combination of the references, "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413,425 (CCPA 1981).

One of ordinary skill would have known that Yamada's screen for selecting destination options described an implementation for Hartman's selection of codes representing groups of partial purchaser-specific order information. The applicant contends that none of the cited references teaches or suggests that the predefined procurement options include "shipping instructions" for use in delivering ordered items in addition to the delivery and payment information. The examiner disagrees with the Applicant. Since the examiner found supra that Hartman described presenting a group of procurement options including delivery address and payment option, the only issue here is whether Hartman suggested including shipping instructions in such options. Hartman explicitly shows including shipping instructions in the form of a shipping method in such options, at least at the data entry level (FF 02).

C. The cited references do not disclose or suggest sending a request to order the identified item in response to receiving selection of one of the plurality of fulfillment options (pages 21-26). The examiner disagrees. The examiner has already analyzed supra that Hartman combined with Yamada teaches requiring a selection of a procurement option by a purchaser enabling executing an order for the identified item and for the identified user. In view of the foregoing, rejection of all claims is sustainable in view of the cited references Hartman, Yamada and Holland. .